

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DELFINA RODRIGUEZ,

Plaintiff,

-against-

AVONDALE CARE GROUP, LLC d/b/a
AVONDALE CARE GROUP, PETER
CARROL, LORNA GRAZIO,

Defendant.

1:16 Civ. 03084

**AFFIRMATION OF RAINA VAN
DYKE IN SUPPORT OF
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT AND
OPPOSITION TO PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT**

I, Raina Van Dyke, affirms as follows:

1. I am the Director of Operations at Avondale Care Group ("Avondale"), a party in the above-entitled action. I know the following facts to be true of my own knowledge, and if called to testify, I could competently do so.

2. At the time Avondale was deposed on March 10, 2017, I was the Clinical Director and testified in that capacity. Thereafter, I was promoted to Director of Operations. As Director of Operations, I oversee the day-to-day operations of the company as a whole, including Human Resources, coordination, nursing, as well as oversight of the independent living facility, in which Avondale works in partnership.

3. The administrative structure at Avondale has several layers. Defendant Lorna Grazio is owner and Defendant Peter Carroll is President and owner. In addition to Grazio and Carroll, various individuals oversee departments, ranging from billing & payroll, authorization and pre-billing, human resources, operations, and medical services and nursing. Seven individuals are in management positions and approximately 20 individuals are employed in administrative positions in the various departments.

4. To ensure Avondale's compliance with the ever changing legal landscape of Federal and State labor laws, Avondale has retained and continues to retain outside counsel to counsel, advise, and provide opinions regarding Avondale's policies and procedures, including its payroll.

5. Avondale has a seven-day workweek, which starts on Sunday and ends the following Saturday. When a home health aide is assigned to a 24-Hour "Live-In" shift, the home health aide is paid a rate for the shift, which has been calculated to comply with Federal and New York state labor laws. Paying a rate for the shift is the industry standard in home health care services.

6. As is the customary practice in our Human Resources Department, each new hire is provided the rate information for the "Live-In" shifts, in addition to the Employee Handbook, which lays out Avondale's policies and procedures for "Live-In" shifts. The Employee Handbook includes the Live-In Agreement which provides in part that the employee who works "Live-In" shifts agrees to take the required 11 hours of breaks, including eight hours of sleep, five of which are uninterrupted and three hours of meal breaks, and further agrees to notify Avondale immediately with accurate and specific records if the employee is unable to take the required breaks. In accepting employment at Avondale, the employee expressly agrees to be bound by the Live-In Agreement.

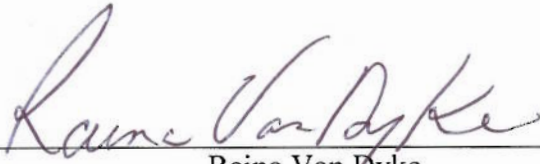
7. For "Live-In" shifts, home health aides are paid a particular rate for the first three 24-Hour "Live-In" shifts, which comes to 39 hours (13 hours at three days). If the home health aide works additional "Live-In" shifts in a given a workweek, the rate for the subsequent shifts is increased to take into account overtime. These rates are based on the home health aide-employee taking the required breaks. If the home health aide-employee is unable to take the required

breaks and immediately informs Avondale with accurate and specific records as to the specific occurrence, Avondale will compensate the home health aide-employee for the additional time the home health aide-employee worked in excess to the 13 hours of a given "Live-In" shift.

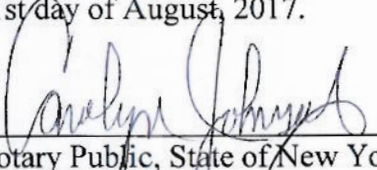
8. Avondale also participates in the Home Care Worker Wage Parity Act, as required by New York Law. Currently, the minimum cash portion we are required to pay employees is \$11.00 per hour, with the benefit portion at a minimum rate of \$4.09. Thus, our employees make at a minimum \$15.09 per hour. Avondale is not required to directly pay the benefit portion to the employee if the benefit portion is paid directly into the benefits that the employees, including Plaintiff, receives. Avondale pays the benefit portion directly into the benefits for employees, thus the employees do not see the benefit portion in their wages. Employee benefits include paid time off (or vacation pay), sick time, and health insurance.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in New York City, New York on the 31st day of August, 2017.


Raina Van Dyke

Sworn to before me this
31st day of August, 2017.


Notary Public, State of New York

Carolyn Johnson
Notary Public, State of New York
No. 01JO6327023
Qualified in New York County
Commission Expires June 20, 2019